

12 March 2020

ODEI “Lowdown” – The True Facts or Relevant Information



SUBJECT: Age Discrimination & Age Discrimination in Employment Act (ADEA)

APPLICABILITY: Applicants for, or employees in, Title V and Title 32 technician status

Age Discrimination

Age discrimination involves treating an applicant or employee less favorably because of his or her age.

The Age Discrimination in Employment Act of 1967 (ADEA) forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40, although some states have laws that protect younger workers from age discrimination. It is not illegal for an employer or other covered entity to favor an older worker over a younger one, even if both workers are age 40 or older.

Age Discrimination & Work Situations

The law prohibits discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment.

Age Discrimination & Harassment

It is unlawful to harass a person because of his or her age.

Harassment can include, for example, offensive or derogatory remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Age Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees 40 or older and is not based on a reasonable factor other than age.

Who the Age Discrimination in Employment Act of 1967 (ADEA) Covers

The ADEA applies to private employers with 20 or more employees, state and local governments, employment agencies, labor organizations and the federal government.

ADEA protections also include:

- **Advertisements and Job Notices**

The ADEA generally makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. A job notice or advertisement may specify an age limit only in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business.

- **Apprenticeship Programs**

It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

- **Pre-Employment Inquiries**

The ADEA does not explicitly prohibit an employer from asking an applicant's age or date of birth. However, such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, contrary to the purposes of the ADEA. If the information is needed for a lawful purpose, it can be obtained after the employee is hired.

- **Benefits**

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. Congress recognized that the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and that those greater costs might create a disincentive to hire older workers. In limited circumstances, an employer may be permitted to reduce certain benefits based on age, as long as the cost the employer incurs to provide those benefits to older workers is no less than the cost of providing the benefits to younger workers.

Employers are permitted to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit.

SCNG ODEI Contact Information

If You Are A Federal Employee or Job Applicant and Believe You Have Been Subjected to Unlawful Discrimination, Harassment or Retaliation on the basis of **race, color, religion, national origin, genetic information, sex, (including pregnancy, gender identity, sexual orientation), age (40 and over), or disability, contact the Office of Diversity, Equity, and Inclusion.**

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